

## 16A C.J.S. Constitutional Law § 780

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### Constitutional Law

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### PART III. Overview of Protected Personal Rights and Freedoms; Police Power

#### IX. Personal, Civil, and Political Rights and Freedoms

##### C. Personal Liberty

###### 1. In General

## § 780. Definitions, nature, and extent

Topic Summary | References | Correlation Table

### West's Key Number Digest

West's Key Number Digest, Constitutional Law  1079

**The right of personal liberty consists of the power of locomotion, of changing situation or removing one's person to whatsoever place one's inclination may direct without any restraint except by due process of law.**

Liberty under the law extends to the full range of conduct which an individual is free to pursue.<sup>1</sup> It is not limited to freedoms exclusively named in either the Bill of Rights or elsewhere in the Constitution<sup>2</sup> but instead extends to the basic values implicit in the concept of ordered liberty and to basic civil rights.<sup>3</sup>

The right of personal liberty consists in the power of locomotion, of changing situation or removing one's person to whatever place one's inclination may direct without any restraint except by due process of law.<sup>4</sup> It includes a person's right to be let alone and to determine his or her mode of life whether it be a life of publicity or of privacy, and to order his or her life and manage his or her affairs in a manner that may be most agreeable to him or her, so long as he or she does not violate the rights of others or of the public.<sup>5</sup>

Individuals have a right to be free from physical restraint<sup>6</sup> and to move about as long as they are not committing a crime.<sup>7</sup> Freedom of movement is a fundamental right within the concept of personal liberty<sup>8</sup> and is generally associated with the fundamental right to travel.<sup>9</sup>

The right of personal liberty frequently includes other rights, such as the right to enter into and maintain certain human relationships,<sup>10</sup> including family relationships and the parent-child relationship,<sup>11</sup> the right to forego medical treatment,<sup>12</sup> and the absence of arbitrary and unreasonable restraint on a person in the conduct of his or her business and the handling of his or her property.<sup>13</sup>

While there is some authority to the contrary,<sup>14</sup> the right to live where one chooses is generally regarded as a fundamental right and an integral part of the right of liberty and is constitutionally protected.<sup>15</sup>

Liberty in this sense is the liberty of natural, not artificial, persons.<sup>16</sup> Certain purely personal constitutional guarantees are unavailable to corporations and other organizations.<sup>17</sup> Whether a right is purely personal depends on its nature, history, and purpose.<sup>18</sup>

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#### Footnotes

1 U.S.—Neinast v. Board of Trustees of Columbus Metropolitan Library, 346 F.3d 585, 2003 FED App. 0363P (6th Cir. 2003); Ricks v. District of Columbia, 414 F.2d 1097 (D.C. Cir. 1968).

2 U.S.—Brown v. Supreme Court of Virginia, 359 F. Supp. 549 (E.D. Va. 1973), judgment aff'd, 414 U.S. 1034, 94 S. Ct. 533, 38 L. Ed. 2d 327 (1973) and judgment aff'd, 414 U.S. 1034, 94 S. Ct. 534, 38 L. Ed. 2d 327 (1973).

Cal.—City of Carmel-By-The-Sea v. Young, 2 Cal. 3d 259, 85 Cal. Rptr. 1, 466 P.2d 225, 37 A.L.R.3d 1313 (1970).

3 Cal.—City of Carmel-By-The-Sea v. Young, 2 Cal. 3d 259, 85 Cal. Rptr. 1, 466 P.2d 225, 37 A.L.R.3d 1313 (1970).

4 U.S.—Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).  
Okla.—Dowell v. City of Tulsa, 1954 OK 194, 273 P.2d 859, 43 A.L.R.2d 445 (Okla. 1954).

#### Pretrial detention

Any pretrial detention impinges on right to liberty.

N.Y.—People ex rel. Wayburn v. Schupf, 39 N.Y.2d 682, 385 N.Y.S.2d 518, 350 N.E.2d 906 (1976).

#### Right not to be imprisoned without hearing

U.S.—Jackson v. Fair, 846 F.2d 811 (1st Cir. 1988).

5 Ga.—McDaniel v. Atlanta Coca-Cola Bottling Co., 60 Ga. App. 92, 2 S.E.2d 810 (1939).

6 Cal.—People v. Landau, 214 Cal. App. 4th 1, 154 Cal. Rptr. 3d 1 (4th Dist. 2013), review filed, (Mar. 21, 2013).

Md.—Wheeler v. State, 160 Md. App. 566, 864 A.2d 1058 (2005).

Mass.—Com. v. Knapp, 441 Mass. 157, 804 N.E.2d 885 (2004).

Wis.—State ex rel. Marberry v. Macht, 2002 WI App 133, 254 Wis. 2d 690, 648 N.W.2d 522 (Ct. App. 2002), decision rev'd on other grounds, 2003 WI 79, 262 Wis. 2d 720, 665 N.W.2d 155 (2003).

#### Arrest and detention

U.S.—Apton v. Wilson, 506 F.2d 83 (D.C. Cir. 1974).

#### Right not reserved exclusively for U.S. citizens

U.S.—Lozano-Castaneda v. Garcia, 238 F. Supp. 2d 853 (W.D. Tex. 2002).

7 Wash.—State v. Lee, 135 Wash. 2d 369, 957 P.2d 741 (1998).  
8 U.S.—Nunez by Nunez v. City of San Diego, 114 F.3d 935 (9th Cir. 1997).  
Cal.—People v. Trevisanut, 160 Cal. App. 3d Supp. 12, 207 Cal. Rptr. 921 (App. Dep't Super. Ct. 1984).  
Colo.—People in Interest of J.M., 768 P.2d 219 (Colo. 1989).  
Haw.—Coyle v. Compton, 85 Haw. 197, 940 P.2d 404 (Ct. App. 1997).  
Md.—Wheeler v. State, 160 Md. App. 566, 864 A.2d 1058 (2005).  
Mass.—Com. v. Knapp, 441 Mass. 157, 804 N.E.2d 885 (2004).  
Mont.—Matter of C.H., 210 Mont. 184, 683 P.2d 931 (1984).  
9 U.S.—Gary v. City of Warner Robins, Ga., 311 F.3d 1334 (11th Cir. 2002).  
As to the right to travel, see §§ 786 to 797.  
10 Tex.—Osterberg v. Peca, 12 S.W.3d 31 (Tex. 2000).  
11 U.S.—Kipps v. Caillier, 205 F.3d 203, 142 Ed. Law Rep. 640 (5th Cir. 2000).  
Mont.—Matter of J.L.S., 234 Mont. 201, 761 P.2d 838 (1988).  
Vt.—In re S.B.L., 150 Vt. 294, 553 A.2d 1078 (1988).  
12 Ky.—Woods v. Com., 142 S.W.3d 24 (Ky. 2004).  
Ohio—Steele v. Hamilton Cty. Community Mental Health Bd., 90 Ohio St. 3d 176, 2000-Ohio-47, 736 N.E.2d 10 (2000).  
**Right of pretrial detainee in avoiding unwanted antipsychotic medication**  
U.S.—Bee v. Greaves, 744 F.2d 1387 (10th Cir. 1984).  
13 Neb.—McGraw Elec. Co. v. Lewis & Smith Drug Co., 159 Neb. 703, 160 Neb. 319, 68 N.W.2d 608 (1955).  
14 U.S.—Doe v. Miller, 405 F.3d 700, 25 A.L.R.6th 695 (8th Cir. 2005).  
15 Cal.—Conservatorship of Valerie N., 40 Cal. 3d 143, 219 Cal. Rptr. 387, 707 P.2d 760 (1985).  
Mich.—Michigan State Employees Ass'n v. Civil Service Commission, 91 Mich. App. 135, 283 N.W.2d 672 (1979).  
Ohio—Allison v. City of Akron, 45 Ohio App. 2d 227, 74 Ohio Op. 2d 343, 343 N.E.2d 128 (9th Dist. Summit County 1974).  
**Under state constitution**  
N.H.—Seabrook Police Ass'n v. Town of Seabrook, 138 N.H. 177, 635 A.2d 1371 (1993).  
**Part of right to travel**  
Minn.—LaChapelle v. Mitten, 607 N.W.2d 151 (Minn. Ct. App. 2000).  
As to the right to travel, see §§ 786 to 797.  
16 U.S.—Oney v. Oklahoma City, 120 F.2d 861 (C.C.A. 10th Cir. 1941).  
17 U.S.—Consolidated Edison Co. of New York, Inc. v. Pataki, 292 F.3d 338 (2d Cir. 2002).  
18 U.S.—Consolidated Edison Co. of New York, Inc. v. Pataki, 292 F.3d 338 (2d Cir. 2002).